

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

BARRY A. MULARI

BKY Case No. 04-50721 RJK

Chapter 13

Debtor(s).

**NOTICE OF HEARING AND
MOTION FOR DISMISSAL**

Michael J. Farrell, Chapter 13 Trustee, hereby moves to dismiss the above-entitled Chapter 13 case.

1. The Court will hold a hearing on this motion at 10:00 a.m. on October 25, 2004 in Courtroom 2 – 4th Floor, 515 West 1st Street, Duluth, Minnesota, 55802.
2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
3. The Debtor commenced this case by filing a voluntary Chapter 13 petition on June 21, 2004. This case is pending before this Court.
4. The Court has jurisdiction pursuant to 28 U.S.C. § § 157 and 1334. This motion is brought pursuant to 11 U.S.C. §1307, Bankruptcy Rule 1017 and Local Rule 1017.
5. The Debtor has failed to make payments to the Trustee as outlined in the proposed Plan. To date, the Debtor has paid to the Trustee one payment totaling \$900.00. That check was returned as an unpaid NSF. No other payments have been made. The Debtor is currently three months in default totaling \$2700.00. This amount does not include any payments that may come due between now and the time of the hearing.
6. The Debtors plan was filed on July 1, 2004. A confirmation hearing on that plan was scheduled for September 27, 2004. On August 24, 2004, Robert Kanuit filed an objection to the confirmation of the plan on behalf of the Trustee. The Trustee's objection was upheld and the plan denied at the hearing on September 27, 2004. To date, no new plan has been filed.

WHEREFORE, the Trustee requests an order as follows:

- (A) Dismissing the above entitled Chapter 13 case; and
- (B) Granting any other relief the Court deems just and proper.

Dated: October 6, 2004

/s/ Michael J. Farrell

Michael J. Farrell, Standing Trustee

PO Box 519

Barnesville, MN 56514

(218) 354-7356

UNITED STATES BANKRUPTCY COURT
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The undersigned, being an employee of the standing Chapter 13 Trustee, declares that on the date indicated below, I served the following:

Notice of Hearing and Trustee's Motion to Dismiss
and Unsworn Declaration of Proof of Service

Upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Barnesville, Minnesota, addressed to each of them as follows:

Debtor(s):

Barry A. Mulari
PO Box 266
Aurora, MN 55705-0266

Debtor's Attorney:

John F. Hedtke
Hedtke Law Office
1217 E. 1st St.
Duluth, MN 55805

Additional Copy(s) addressed to:

United States Trustee
1015 U.S. Courthouse
300 W. 4th St.
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 6, 2004

/s/ Belinda D. Kurtz
Belinda D. Kurtz
Chapter 13 Office

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Debtor(s).

This matter came before the Court on October 25, 2004 at 10:00 a.m., or as soon thereafter as could be heard, on a motion by the Chapter 13 Trustee to dismiss this case. The appearances are as noted on the record. The court made its findings and conclusion on the record. Based on the Local and Federal Rules of Bankruptcy Procedure, it is

HEREBY ORDERED:

That this Chapter 13 Case is dismissed.

Dated: _____

Judge Robert J. Kressel
U.S. Bankruptcy Judge